

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA,
ALBERTA, SASKATCHEWAN, MANITOBA, Québec, NEW BRUNSWICK, NOVA SCOTIA,
PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, NORTHWEST
TERRITORIES, NUNAVUT AND YUKON

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE
RELIEF APPLICATIONS

AND

IN THE MATTER OF GRYPHON INVESTMENT COUNSEL INC. AND ITS AFFILIATES

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (the "Jurisdictions") has received an application from Gryphon Investment Counsel Inc. ("Gryphon") and its affiliates (collectively, the "Filer") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that:

(a) certain trades in privately-placed units (the "Privately-Placed Units") of mutual funds established, or to be established from time to time, by the Filer (the "Funds") are not subject to the dealer registration requirement or the prospectus requirement under the Legislation of the Jurisdictions; and

(b) trades in Privately-Placed Units and Additional Units (as defined below) are not subject to the requirements of the Legislation of some of the Jurisdictions relating to the filing of forms and the payment of fees within certain prescribed time periods (the "Reporting Requirement");

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the British Columbia Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. Gryphon is a company incorporated under the laws of Canada and is registered under the *Securities Act* (Ontario) as an advisor in the categories of investment counsel and portfolio manager;

2. the existing Funds are all trusts established under the laws of Ontario;
3. the Filer is, or will be, the manager of each of the Funds and the Filer has offered or will offer Privately-Placed Units of the Funds;
4. each of the Funds is, or will be, a "mutual fund" as defined in the Legislation;
5. it is not currently intended that the Privately-Placed Units, Additional Units or Reinvested Units will be listed on any stock exchange;
6. none of the Funds is a "reporting issuer" as such term is defined in the Legislation;
7. Privately-Placed Units of the Funds will be distributed on a continuous basis;
8. the Funds will initially distribute Privately-Placed Units to investors in compliance with available exemptions from the prospectus requirement, including, where available, the "accredited investor exemption" (the "Accredited Investor Exemption"), the private placement exemption (the "Private Placement Exemption") and the sophisticated purchaser exemption (the "Sophisticated Purchaser Exemption");
9. trades in the Privately-Placed Units of the Funds are effected, or will be effected, in the Jurisdictions through a registered dealer, or in reliance on an exemption from the dealer registration requirement set out in the Legislation;
10. where Privately-Placed Units of the Funds are, or will be, distributed in reliance on the Private Placement Exemption, the minimum initial investment by a resident in any Jurisdiction will not be less than the prescribed amount (the "Prescribed Amount") in that Jurisdiction;
11. following an initial investment under the Private Placement Exemption, a Fund may distribute additional Privately-Placed Units of that Fund ("Additional Units") to existing holders in increments of less than the Prescribed Amount, provided the existing holder holds Privately-Placed Units of such Fund having an aggregate acquisition cost or aggregate net asset value of not less than the Prescribed Amount in the Jurisdiction where the existing holder is resident;
12. the issuance of Additional Units of a Fund to an existing holder in such circumstances is exempt from the dealer registration requirement and prospectus requirement of the Jurisdictions, except Manitoba, Québec, New Brunswick, Prince Edward Island, Newfoundland and Yukon;
13. each Fund proposes to distribute Privately-Placed Units ("Reinvested Units") by way of reinvestment of distributions to existing holders of the Fund, whether of net income, net realized capital gains or returns of capital;
14. the distribution of Reinvested Units of a Fund upon the reinvestment of such distributions is not wholly exempt from the dealer registration requirement and the prospectus requirement of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon;

15. the Legislation of some of the Jurisdictions has a Reporting Requirement in respect of distributions under the Private Placement Exemption, the Accredited Investor Exemption, and the Sophisticated Purchaser Exemption, where applicable, and British Columbia, Alberta, Saskatchewan and Nova Scotia also have a Reporting Requirement in respect of distributions of Additional Units; and

16. Privately-Placed Units of the Funds may or may not be transferable, but will be redeemable upon the request of the existing holder;

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers are satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

1. the dealer registration requirement and prospectus requirement contained in the Legislation of the Jurisdictions shall not apply to trades in Reinvested Units of a Fund provided that:

(a) no sales commissions or other charges are payable in respect of such issuance of Reinvested Units;

(b) each existing holder who receives Reinvested Units has received, not more than 12 months before the issuance, a statement describing (i) the right the unitholder has to make an election to receive cash instead of Reinvested Units on the payment of the net income or net realized capital gains distributions or distributions that are a return of capital, (ii) instructions on how the right referred to in subclause (i) can be exercised, and (iii) the fact that no prospectus is available for the Fund as Reinvested Units are only offered under exemptions from the prospectus requirement;

(c) this section 1 will cease to be in effect in a Jurisdiction 90 days after the coming into force of any securities legislation in such Jurisdiction that provides an exemption from the dealer registration requirement and prospectus requirement for distributions of reinvested units of mutual funds;

(d) the first trade in Reinvested Units shall be deemed to be a distribution or primary distribution to the public, unless, except in Quebec, the conditions in sections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102") are satisfied; and

2. the dealer registration requirement, if applicable, and prospectus requirement contained in the Legislation of Alberta, Manitoba, Québec, New Brunswick, Prince Edward Island,

Newfoundland, and Yukon shall not apply to trades in Additional Units to existing holders of a Fund provided that:

(a) at the time of the trade of Additional Units of a Fund, the existing holder then owns Privately-Placed Units of the Fund having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount, or in the case of Alberta, the Prescribed Amount that was in effect at the time the existing holder made the initial investment;

(b) this section 2 will cease to be in effect in a Jurisdiction 90 days after the coming into force of any securities legislation in such Jurisdiction that provides an exemption from the dealer registration requirement and prospectus requirement for distributions of additional units of mutual funds;

(c) the first trade in Additional Units shall be deemed to be a distribution or primary distribution to the public, unless, except in Quebec, the conditions in sections (2) or (3) of section 2.5 of MI 45-102 are satisfied; and

3. the Reporting Requirement of the Legislation of the Jurisdictions, other than Manitoba, or New Brunswick, Prince Edward Island and the Yukon, does not apply to a trade in Privately-Placed Units of a Fund under the Accredited Investor Exemption, the Sophisticated Purchaser Exemption, or the Private Placement Exemption or to a trade in Additional Units of a Fund, provided that:

(a) within 30 days of the end of each financial year of each Fund, such Fund

(i) files with the applicable Decision Maker a report in respect of all trades in Privately-Placed Units and Additional Units of the Fund during such financial year, in the form prescribed by the applicable Legislation;

(ii) remits to the applicable Decision Maker the fee prescribed by the applicable Legislation; and

(iii) files with the Decision Maker in Quebec annual audited financial statements and the prescribed fee within 140 days of each financial year; and

(b) this section 3 will cease to be in effect in a Jurisdiction 90 days after the coming into force of any securities legislation in such Jurisdiction that provides an exemption from the reporting requirement for trades in units of mutual funds under the Accredited Investor Exemption or Private Placement Exemption; and

4. in Québec, the Filer notifies and obtains the approval of the Decision Maker in Québec of its intention to rely on this relief in respect of Funds to be established in the future.

May 30, 2003.

Brenda Leong
Director

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from dealer registration and prospectus requirements for trades by mutual funds of reinvested securities and additional securities to existing unitholders, subject to certain conditions – relief from requirement to report distribution of privately-placed units or additional units provided report filed and fees paid within 30 days after financial year-end

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76